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ABSTRACT

This analysis of the research outlines the history of the conflict over student rights--a conflict that has its basis in American political and social philosophy. The author views the tension between those who favor the expansion of civil rights for students and those who advocate a return to discipline based on the in loco parentis doctrine as indicative of a wider conflict between the Puritan concept of authoritarianism and Jeffersonian democracy. The report surveys major areas of legal controversy, including suspension, expulsion, and due process; corporal punishment; freedom of speech; the press; assembly and religion; freedom from unreasonable search and seizure; and accessibility of student records. The author concludes that the area of student constitutional rights is not one that lends itself to easy solutions, and that the controversy will continue to plague the schools as long as the conflict in the society at large remains unresolved. (Author)

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school leadership digest

Dee Schofield

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FOREWORD

With the *School Leadership Digest* series, the National Association of Elementary School Principals adds another project to its continuing program of publications designed to offer school leaders essential information on a wide range of critical concerns in education.

The *School Leadership Digest* is a series of monthly reports on top priority issues in education. At a time when decisions in education must be made on the basis of increasingly complex information, the *Digest* provides school administrators with concise, readable analyses of the most important trends in schools today, as well as points up the practical implications of major research findings.

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INTRODUCTION: THE PHILOSOPHICAL ROOTS

All animals are equal
but some animals are more equal than others.
George Orwell, *Animal Farm*, 1946

My object all sublime
I shall achieve in time—
To let the punishment fit the crime—
The punishment fit the crime.
Sir W. S. Gilbert, *The Mikado*
first performance 1885

School administrators of today find themselves caught between two warring factions: the "hardnoses" who agree wholeheartedly with ex-Vice President Agnew that "discipline and order ought to be a first priority—even ahead of curriculum—in the schools of this country," and the "bleeding heart" liberals who believe that the best education can never be achieved in a stringent "law 'n order" environment.

Almost nowhere does this conflict become more heated than in the controversial area of rights for students. The conflict over student rights is a manifestation of a much broader (and deeper) conflict within American society as a whole. That the schools have become embroiled in this controversy is an inevitable result of the nature of public education in this country.

Hand-in-hand with the uniquely American idea of public education for everyone (rich or poor) go two diametrically opposed concepts. Both have their roots deep in American history and philosophy, and their impact is still felt in current attempts to define the rights of students. One holds that authority emanates from above, and those governed by such authority have little or no say about how that power is exercised. The other holds that authority originates solely within the governed themselves and that they alone are able to determine what governmental action is in their best

interests. This conceptual conflict has plagued American education (just as it has American political philosophy) since before the Revolution.

Puritan Authoritarianism

The idea of public education, along with the concept of authoritarian control, originated in the Massachusetts Bay Colony settled by Puritans in the seventeenth century. The Puritan governmental structure reflected these colonists' concern with strict maintenance of order, as well as their preoccupation with the fallibility of man, whom their theology defined as weak, sin-ridden, and incapable of truly moral, independent action. To regulate the profligate tendencies among their people, the governors of the colony maintained tight, autocratic control, claiming that "a higher authority had given them the sole right to 'correct, govern, punish, pardon, and rule,' " as Ladd states. They regarded education as one means of strengthening this control, which they viewed as the rule of God among men. Hence, in 1647 in what has come to be known as the "Old Deluder Satan Act," the colony's governors established a system of public instruction intended to provide "knowledge of the scripture," and to ensure "that learning may not be buried in the graves of our forefathers."

Another purpose of public education, as the Puritans conceived it, was to facilitate the socialization of the young into the accepted forms of Puritan life. The education process utilized in England was no longer workable in the New World where the family structure and parental control were already weakening. As Goldstein notes, "The breakdown in the role of the family produced legislation in all colonies requiring children to obey parents and providing sanctions for disobedience." Everyone is familiar with the more drastic forms of Puritan punishment (dunkings, the stocks, burning at the stake). And although such brutality rarely applied to school children, the idea of "simple and swift" discipline with no recourse to due process or appeal was an essential part of

Puritan education, as Ladd points out, just as it was an essential component of Puritan government.

Jeffersonian Democracy

In sharp contrast to the rigid authoritarian structure of Puritan government (and schools) stands the democracy of Jefferson and Madison. Their notion that power resides with the people, not with the governors, is directly counter to the theocratic concept of power from above. As Ladd summarizes Madison, "Ultimate authority comes not from above but from below; it is not centralized but is scattered equally among the members of the community."

Jefferson and Madison, both framers of the federal system of government embodied in the Constitution, were well aware that "the reason of man continues fallible," as Madison states in *The Federalist, No. X*. But their concept of the fallibility of man lacked the vehement emphasis on weakness and sin so characteristic of Puritan thought. According to Madison, the way to temper the harmful effects of man's inadequate exercise of reason was to frame a government in which no one person, or group of persons, had supreme authority. Thus, "Those who govern have defined functions beyond which they may not go," as Ladd states. These functions are defined by law; hence, democracy, as these two theorists conceived it, is government by law, not by men. And the Constitution, in conjunction with the courts, exists to resolve conflicts arising over the exercise of power.

Operating under these democratic premises, Jefferson outlined a function of education quite different from that espoused by the Puritans. Instead of a means of control, education was, to Jefferson, the means of preparing the populace for assumption of governmental responsibility. In his "Notes on Virginia" (cited in Goldstein), he proposes a system of schooling intended "to diffuse knowledge more generally through the mass of the people." He outlines a system of education designed to provide the essentials ("reading, writing, and arithmetic") for everyone. From these

tuition-less schools the cream of the crop is to be selected for further schooling, thus allowing those with more natural ability access to higher education. Noticeably absent in Jefferson's plan is any reference to the discipline and rigid control so characteristic of the Puritan education system.

Implications for Education

The effects of this philosophical split between authoritarianism and democracy are perhaps more obvious in education today than ever before, in large part because of the increased attention to student rights and the regulation of student behavior. That educators are aware of the divergent nature of these concepts, as well as their implicitly different definitions of the relationship between school and student, is quite evident in much of the literature. Pearl asserts that "we find ourselves in a highly polarized situation, caught in the line of fire of two warring groups—the fundamentalists . . . and the free spirits." Ladd notes the continued prevalence of the Puritan concepts of education and government, pointing out that "school law specialists still commonly refer to the regulating of student conduct as 'pupil control.' "

But the countercurrent of democracy also has its impact on the public schools' attitudes toward students. According to Ladd, "Federal judges and other persons steeped in the Madisonian system have increasingly pressed our public schools to adopt that system in place of the traditional one."

The courts, especially since the 1954 Supreme Court decision in *Brown v. Board of Education*, have come to the fore in the continuing struggle to define the rights of students—and implicitly to define the relationship between student and school. The ascendancy of the courts in matters relating to student rights and discipline is in part the result of the seeming inability of legislative bodies (especially on the state level) to come to terms with the issues, as Hazard points out. But this ascendancy is also the result of the attention to civil liberties so evident in the past two decades. And more fundamentally, within the courts, as within the law itself, reside

the basic concepts of human rights.

The courts are the guardians of the Constitution, with its Bill of Rights—the very documents that Madison and Jefferson helped to create. The increasingly important role of the courts in definition of student rights is perhaps as inevitable as the clash between two opposing concepts of government. Ladd specifies the tension between the two when he states that "since for two centuries we have run schools on the Puritan system within a broader society run more or less on Madisonian principles, we may reasonably ask whether it isn't possible for us to continue. I believe it is not."

Because of the greater role played by the courts in the delineation of student rights, this paper focuses in large part on what Hazard terms "court-made" law. The school administrator today is in a rather awkward situation, as numerous writers on this topic have pointed out. He or she must incorporate the mandates of the courts into the governmental and disciplinary structure of the school, walking a fine line between Pearl's "two warring groups." And above all else, he must always consider how best to achieve the goals of education for his students—how to prepare them for citizenship.

Henning points out that the very tension and conflict over the rights of students may be a valuable source of education in itself: "Too many of those concerned about the issue of student behavior overlook the extraordinary educational opportunity it presents. The issues related to student behavior are issues of fundamental importance to society."

THE BASIS FOR AUTHORITY: IN LOCO PARENTIS

Nowhere in the area of control of student behavior is the conflict between authoritarianism and democracy more evident than in the controversy over the concept of *in loco parentis*. This common-law measure is a direct descendant of the Puritan idea of authority. It embodies the notion that "school authorities stand in the place of the parent while the child is at school," according to Reutter.

This concept incorporates both the constructive and punitive aspects of the parental role, though most of the emphasis (and certainly the controversy) is on the latter aspect. However, as Nolte points out in his 1973 paper, the *in loco parentis* role also means that the school administrator "is a defender and supporter of the student," playing "the role of the child advocate, there to help the student." The conflict arises, according to Nolte, when this constructive, protective function is coupled with the other side of the role—the punitive side. As Nolte views this conflict,

> It seems to be unfair for a teacher or administrator to take on the duties and responsibilities of a person standing *in loco parentis*, then turn that role into one in which he or she conducts an investigation resulting in some form of punishment for the accused student. The role conflict arises where the administrator or teacher steps outside the protection of his *in loco parentis* role, and becomes in effect, an agent of the state.

But the punishment function is as much a part of *in loco parentis* as the child advocate function, as Reutter points out: "As applied to discipline the inference is that school personnel may establish rules for the educational welfare of the child and the operation of the school and may inflict punishments for disobedience."

In loco parentis is all-important in the controversy over definition of student rights because it expresses the two essentially incompatible roles that school officials must play.

Its weaknesses were recognized by the courts as early as 1859 when a Vermont court found that the doctrine had certain "flaws." Kleeman states that this court noted the possibility for abuse of the punitive side of the role. The school official has none of the "instinct of parental affection" that normally acts as a curb on intrafamily discipline, according to this court.

Although some court rulings have reinforced the *in loco* doctrine, even as recently as 1969 (*State v. Stein*, 456 P.2d 1), others have seriously questioned its validity, especially where it interferes with due process, as Nolte points out. That no definitive ruling (specifically from the Supreme Court) has been, or even can be, rendered on this doctrine indicates that the tension between authoritarian control and democratic latitude has yet to be resolved. This tension is reflected in most areas of student rights, though in some the preponderance of court opinion falls on one side or the other.

But it is amply clear to educators that they can no longer fall back on their quasi-parental role in situations involving student discipline. The insecurity that this ambiguity arouses is angrily demonstrated by Howarth when he states that the teacher or administrator "no longer may identify himself with the *in loco parentis* role in a given community without fear of recrimination from a parent who, under the auspices of the ACLU or some such group, will prosecute him for violation of some particular right."

Although not all educators experience the paranoia evinced by Howarth, most do feel the need for a definitive resolution of the *in loco* issue. It seems unlikely, however, that such resolution will be readily forthcoming, since the underlying tension between authoritarianism and democracy in this country has gone unresolved for nearly 200 years.

THE VERDICT OF THE COURTS: STUDENTS HAVE RIGHTS

With its 1969 decision in *Tinker v. Des Moines Independent Community School District*, the Supreme Court directly addressed the area of student discipline per se for the first time, as Reutter notes. The "black armband" case has received more attention by educators and student rights advocates than has almost any other court decision in recent history. Although Mr. Justice Fortas, in writing the majority opinion of the court, emphasized that "for almost 50 years" the Supreme Court has upheld the First Amendment rights of students, the *Tinker* case presents the issues of the constitutional rights of students in terms much clearer than previous rulings. In upholding the students' claim that their freedom of expression had been abridged by a school rule barring the wearing of armbands in protest of the Vietnam war, the Court states the crux of its argument in memorable terms:

> First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. (393 U.S. 503, 89 S. Ct. 733, 736)

Although legitimately viewed as a milestone case by student rights advocates, the *Tinker* decision was far from definitive in all areas. The Court explicitly spelled out those areas (such as "type of clothing" and "hair style or deportment") to which the ruling did not refer. The Court also asserted "the need for affirming the comprehensive authority of the States and of school authorities, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." But the necessity of balancing school authority with students' constitutional rights was made amply clear. And underlying the Court's decision is the assumption that students *have* constitutional rights, just as

adults do. This assumption is a far cry from the view, implicit in the *in loco parentis* doctrine, that children are not adults and, therefore, do not have the rights of citizens.

That such a case as *Tinker* would reach the Supreme Court, or, indeed, even arise at all, is an indication of the pervasive attention to civil liberties so evident in the last 20 years or so. The 1954 *Brown* case, in which the Court opened the way to racial desegregation of the schools, marked the beginning of the movement toward a fuller realization of civil rights not only for racial minority groups, but for youth as well. The Twenty-sixth Amendment granting the vote to 18-year olds is one indication of the expansion of the rights of young people. And the ever-increasing number of court cases dealing with student rights indicates a much greater awareness on the part of the public at large of the issues involved in defining the student/school relationship.

Shannon assigns the increasing importance of the role of the courts in defining student rights to five factors, all of which in turn affect "the courts' attitude toward public education in the United States." First, the importance of education has become progressively more evident providing greater impetus to guaranteeing equal educational opportunity for everyone. Second, Congress and state legislatures have broadened "the general civil rights laws" to apply to more people in more circumstances. Third, as a whole, however, legislative bodies have failed "to provide adequate solutions to public problems," leaving the courts as the public's final recourse.

Fourth, the mass media has facilitated the exchange of legal concepts and issues, making the general public more aware of the controversies arising over the question of student rights. And finally, as Shannon states, "people are becoming more litigious." They are no longer satisfied with answers given solely by public school officials, so they take their cases to court. It would also seem that people are becoming more sophisticated in their perceptions of the issues, and much more willing (often to the dismay of school officials) to act on their perceptions.

Like it or not, the idea that students have civil rights guaranteed to them by law is becoming increasingly prevalent. A review of the major areas of controversy over student rights indicates the pervasiveness of constitutional questions involved in the definition of those rights. The important role played by federal courts in this definition is a result of these constitutional issues. Although the "principle of noninterference" with legislative or administrative control is followed by the courts, when that control "restricts a so-called 'fundamental' right—one explicitly or implicitly guaranteed by the Constitution," then the courts become involved, as Reutter notes.

Directly counter to the concept of *in loco parentis* is the concept of due process of law for students. While the former assumes that the student must submit unquestioningly and without appeal to the discipline of his superiors, the latter assumes that those superiors may not deprive him of "life, liberty, or property" without according him the chance to answer charges against him and to plead his case before any disciplinary action can be taken.

The extent to which due process must apply in disciplinary cases is still undecided by the courts, but in some areas, such as expulsion and suspension, the due-process requirements are more specifically spelled out. However, in other disciplinary cases (such as those involving corporal punishment), due process has not been required by the courts.

Suspension, Expulsion, and Due Process

Regarded by many educators as severe disciplinary measures, suspension (long-term and short-term) and expulsion have come under close scrutiny by the courts in recent years. The main constitutional issue involved is one of due process, with students and their advocates contending that depriving a student of education without due process of law is a violation of "property" rights and of "liberty" under the Fifth and Fourteenth Amendments.

The fact that due process is guaranteed citizens not once, but twice in the Constitution indicates the centrality of this concept to the American form of government. Nolte notes that the idea of due process, intended to restrict the intrusion of the government into the life of the individual, had its source in English law, dating back to the year 1215 when King John was forced to relinquish some of his power to the citizenry.

The purpose of due process, according to Nolte, "is to guarantee essential *fairness* between the individual and the State." He points out that traditionally "the more severe the penalty, the more likely are the courts to require a larger measure of due process of law." Since suspension, and especially expulsion, are severe disciplinary measures, the courts have increasingly held that due process is in order in such cases. Nolte states that "due process is due when a constitutional right may be involved," and according to several important court decisions, such rights are involved in suspension and expulsion cases.

Although exactly how due process is defined depends in part on the specific situation, it entails in all cases "the rule that all persons are entitled to be informed as to what the State commands or forbids," as a Massachusetts court has ruled (*Gougen v. Smith*, 471 F.2d 47 [1972]).

Nolte states that "there is almost universal acceptance of the idea that due process requires some type of hearing, and that this hearing must occur before state action is taken." In the school setting, due process usually means giving the accused student the chance to know and refute charges brought against him prior to disciplinary action. But the due-process requirements outlined by various courts and school districts are far from standardized, as Flygare points out:

> The law relative to suspensions and expulsions has been in chaos for over a decade. Courts in some sections of the nation have imposed elaborate procedural requirements while courts in other sections have given carte blanche authority to suspend pupils summarily. . . . Added to this is a confusing array of state statutes, state board of education regulations, and local school board rules.

Flygare believes that a definitive Supreme Court ruling on the question of due process in suspension and expulsion cases is the only way to clear up the confusion.

Two 1975 Supreme Court decisions are directly relevant to suspension cases. In one, *Goss v. Lopez*, the court ruled that schools may not suspend students "for one or more periods of ten days" without notice or hearing. However, as

Nolte points out in a 1975 article, this decision is "a not very illuminating 'yes.'" The "minimum" due process for students recommended by the court in short-term suspension cases ("that is, an opportunity to present his [the student's] own side of the story") is the policy followed already by "most good school administrators," according to Nolte. He concludes that "the limits of due process are hardly more clear than they were before" the *Goss* ruling.

The other recent Supreme Court decision, *Wood v. Strickland*, involved both long-term suspension and the right of suspended students to sue for damages. The defendants in this case were individual school board members. The plaintiffs (two high school students from Arkansas) were suspended for allegedly "spiking" the punch at a school function. The Court upheld the ruling of the Eighth Circuit Court that due process for the students had been violated because the school officials failed to supply adequate evidence at the suspension hearing.

And, more importantly, the Supreme Court ruled (under Section 1983 of the Civil Rights Act of 1871) that school board members could be held liable for money damages. According to the court, the "standard of immunity" for school board members does not apply when those members either act in bad faith, or, "by ignorance or disregard of settled, indisputable law," violate a student's constitutional rights.

The Association of California School Administrators points out that the *Wood* decision means the school administrator should be "especially careful" when he is "operating in any area that could possibly affect a person's liberty or property interests, such as student suspensions." This organization also advises the administrator to "avoid even the suggestion of not dealing fairly with all those you encounter in the school community," and suggests that "you may wish to review your personal liability insurance coverage."

Although the suspension/expulsion controversy has yet to be put definitively to rest, it would seem advisable for the school administrator to follow the dictates of due process in such cases, even though due-process procedure obviously

takes more time to implement than summary disciplinary action.

Corporal Punishment

One area of student discipline in which *in loco parentis* still reigns supreme is the area of corporal punishment. Divoky points out that although physical punishment of prisoners and mental hospital patients is outlawed, violence against students is still sanctioned. She notes that this inconsistency is partly the result of the continued public support for corporal punishment in the schools, although the public does not approve of such punishment in other state institutions. Pointing out that few states have outlawed it, Divoky states that several "have enacted laws which expressly permit its use." Thus far, the courts have failed to rule decisively on the use of physical punishment in the schools, although in some cases, its application by school officials was upheld.

In their 1972 ACLU report, Reitman, Follmann, and Ladd summarize quite vividly case studies of abuse of children by teachers and administrators using physical punishment as a disciplinary measure. In some cases, students ended up in hospitals for treatment of injuries incurred when school officials applied such punishment. The ACLU report emphasizes that corporal punishment is not effective as a means of altering student behavior and, indeed, can operate to aggravate certain behavior problems, rather than to eliminate them. As their report concludes,

> The use of physical violence on school children is an affront to democratic values and a constitutional infringement of individual rights. It is a degrading, dehumanizing, and counterproductive approach to the maintenance of discipline in the classroom and should be outlawed from educational institutions . . .

It seems unlikely, however, that the law will change in the immediate future to define corporal punishment of students as "cruel and unusual."

First Amendment rights, within certain limits, are applicable to students, as the *Tinker* case so adequately established. Kleeman states that "the trend of recent court cases affirming basic First Amendment freedoms for . . . students remains quite clear." The First Amendment guarantees freedom of religion, freedom of speech and the press, and freedom of assembly. And in all these areas cases have arisen relating to the kind and degree of freedom students have under this amendment. However, the courts have been far from unanimous in defining students' First Amendment rights, as Reutter notes.

Speech and Expression

The post-*Tinker* cases ("symbol cases," as Reutter calls them) have been decided generally on the criteria stated in *Tinker:* Where the expression of opinion through the wearing of insignia or emblems would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," school officials are justified in banning their wear. The problem, of course, is determining (and substantiating) what material and substantial interference consists of.

The school administrator must use his own judgment in "forecasting" disorder, as Reutter notes. And he must not define disorder as "the discomfort and unpleasantness that always accompany an unpopular viewpoint," as the Court states in *Tinker.* Obviously, a fine line exists between "discomfort" and "disorder," and the court decisions since *Tinker* indicate the difficulty in defining this line. Reutter points out that some "symbol cases" have supported the students' position, while others uphold the school's.

A similar split exists in the courts' attitudes toward dress and appearance (including hairstyle). While some have

overturned school regulations governing student appearance, others have upheld the school's efforts to prescribe standards for student appearance. In some cases, courts have ruled that certain appearance regulations (such as those governing length of hair for male students) do indeed infringe on freedom of expression while, in others, the question of expression was not deemed valid.

The spate of cases in the late 1960s and early 1970s dealing with appearance issues seems to have abated somewhat, perhaps because schools allow more latitude in style and manner of student dress. Detailed dress codes, complete with elaborate restrictions on length of hair and skirts, seem to be on the way out.

The Press and Student Publications

Since 1968, a number of court cases dealing with students' rights to free expression through publications have arisen. According to Reutter, "The common legal thread throughout the cases is that school authorities have attempted to restrict in some manner written communications received by students on school premises." That school authorities can control the "time, place, and manner" of student publications has been well-established (*Grayned v. City of Rockford*, 1972). But such control must not be "deceptively used as a guise for restricting production and distribution of literature deemed undesirable by school authorities," according to Reutter.

The Court of Appeals, Seventh Circuit, has ruled that student-published criticism of the school administration found offensive by school officials is not grounds for expulsion of the students responsible for the criticism. This court used the *Tinker* criterion of "disruption" in reaching its decision, ruling that the material in question had not disrupted the educational process in the school. As with criticism of the school administration, the courts have generally held that other controversial issues dealt with in student publications (including student rights) are permissible as long as the students follow the school's requirements for distribution.

"Obscenity and vulgarity" in student publications is not so clear-cut an issue, as Reutter points out. He notes that although "school authorities can ban obscene materials from school premises," the question of what is "obscene" under the law is as yet unresolved.

The question of "prior restraint" of student publications is also undecided, with some courts holding that such restraint is permissible under certain restrictions, and others viewing it as an infringement on the exercise of First Amendment rights. This ambiguity is reflected in school policies governing administration review of student publications, according to Kleeman. He states that while "the majority of school administrators disclaim requiring 'prior review' of student publications," they acknowledge "that faculty advisers frequently do preview student publishing efforts."

Religion and Assembly

The First Amendment right of freedom of religion (or from, as the case may be) is fairly well established for students, as Kleeman notes. The 1963 Supreme Court decision banning prescribed prayer in the public schools has withstood attempts by Congress and some state legislatures to reinstate school prayer.

Freedom of assembly can easily be governed by the criteria set down in *Tinker*, according to Kleeman. Student meetings should not disrupt the regular school schedule and should conform to restrictions on the use of school facilities and the school name.

Although the issues are certainly not always clear-cut, the school administrator should keep in mind the basic constitutional guarantees of the First Amendment in formulating rules governing student expression.

Search and Seizure

Students' freedom from "unreasonable searches and seizures" is not clearly established, especially where school

property is involved. Although the dormitory rooms of college students are immune from searches by school officials, the public school student's locker is not equally immune, according to Kleeman. He notes that the area covered by the Fourth Amendment is "at least one where vestiges of the doctrine of *in loco parentis* still survive."

However, school officials should exercise caution in their searches of students' lockers and personal belongings, Kleeman warns. He advises that the principal, not the teacher, should conduct the search, and the student should be notified just prior to the search so that he may be present while it is conducted. The presence of a third party as witness is also advisable, according to Kleeman.

Student Records

Although the constitutional issues involved have not yet been delineated, the right of students and their parents to view school records on students has recently been established by Congress. Some educators view the Family Education and Privacy Act of 1974 as an intrusion on their privacy, even suggesting, as Marshall does, that teachers and administrators may be tempted to keep "a double set of books," one for parents and one for their own purposes. It could perhaps be argued that allowing students and parents to view school records constitutes an "unreasonable search," but since the law is so new, its constitutionality has not yet been tested in court.

The Buckley amendment (as the act is known informally) "is virtually guaranteed to bring drastic and comprehensive changes to many school districts," as Cutler states. The Privacy Act covers all official records, files, and data directly related to the student. Parents of students under 18 years of age must be guaranteed access to their children's records, and legal-age students must have direct access to their own records. Teachers and school personnel who have a "legitimate" interest in student records are also guaranteed access. Parents or legal-age students may request a hearing to challenge the

accuracy of information contained in records.

School officials must formally notify parents and students of their rights under this act, although it is not yet clear just what formal notification should consist of, according to Cutler. Schools have 45 days in which to respond to parental or student requests to view records. Parents may also inspect any new instructional materials designed (in the words of the act) "to explore or develop new or unproven teaching methods or techniques."

Because this law is so new, it has not yet been tested in court. But it is obvious that it will have far-reaching consequences for school administration.

Equal Treatment for the Handicapped

Much attention has been given recently to the right of handicapped and exceptional children to an education. Two court decisions have extended the reasoning used in *Brown v. Board of Education* to apply it to exceptional and handicapped students. In *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* (1971) and in *Mills v. Board of Education of the District of Columbia* (1972), "the courts confirmed that all children, regardless of handicap, are entitled to a regular public school education or to adequate alternate educational services suited to their needs," according to Olfson.

The idea that public education is for *all* children is clearly expressed in the "zero-reject" policy affirmed in many state statutes and in several recent court cases. The "zero-reject" policy is directed "toward excluding no one from public education," according to Turnbull. Education thus becomes a *right* for everyone, not a privilege for the so-called "normal" children.

The effects of the "zero-reject" policy are being felt by school districts across the country. No longer, according to Olfson, can school boards get away with giving "the appearance of being willing to offer special education—without having to actually do it." And since the court in the *Mills* case

ruled that lack of finances is not an adequate reason for failure to provide services for the handicapped, even the ever-present "excuse" of no money (which is a hard reality in many districts) can no longer postpone the public school's response to the needs of these children.

Not only is it frequently difficult for the public school system to accommodate handicapped and exceptional children because of the added financial burden, but special private schools for these children are obviously affected by "mainstreaming." Regardless of the difficulties, the courts, according to Turnbull, have increasingly ruled that public instruction is preferable to private instruction, and that "children with special problems benefit from contact with 'normal' children." The "right" of all children to public education seems to be increasingly well established.

CONCLUSION

In view of the ambiguity that still surrounds the definition of student rights, the school administrator's position is not an enviable one. While striving "to let the punishment fit the crime," he must take care not to deprive students of their rights, even though the law is far from clear in many areas just what those rights are. And, as suggested at the first of this paper, hard and fast definitions are not likely to be immediately (if, indeed, ever) forthcoming.

In addition to this ambiguity, the administrator must cope with the paranoia of his colleagues and teachers. Because the concept of civil rights for students assaults the very heart of an *in loco parentis*-oriented educational system, many educators who have identified themselves professionally with such a system find the movement toward recognition of student rights truly threatening.

This attitude is often expressed (implicitly and explicitly) in the literature. For example, Shannon outlines "New Tactics Used by Plaintiffs in Imposing Their Views on, or Enforcing Their Rights Against, Public School Boards." His bias is obvious from the title of his article. He regards (as do many educators) the emergence of student rights litigation, encouraged by the American Civil Liberties Union and other groups, as dangerous to the maintenance of order in the system of education—and indeed, to the maintenance of the system itself, as it is now defined.

So while some educators call for a return to the good ole days of the hickory stick and unquestioned authority, others call for the continued emergence of civil liberties for students. The school administrator, according to Zimmerman, can provide "strong, visible leadership in the area of human rights."

But what most writers in this area of conflict seem to fail to grasp is the meaning of the conflict itself. The issues at stake in the controversy over student rights are issues at stake

in the society at large. And insofar as education has been traditionally regarded as the vehicle (and even the initiator) of social change, the way in which these issues are approached by the schools can have either a positive or negative effect on the whole of American society. If no absolute resolution is available, at least the issues themselves can be articulately and intelligently defined by educators and students.

Perhaps the vitality of our particular form of government and national philosophy lies in the continued, articulated tension between authoritarianism and democracy, control and freedom, institution and individual. If such is the case, then the schools can become (and perhaps already are) an important means of achieving balance between these opposites.

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